

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0102
Sales Tax - Responsible Officer
For the Tax Period 2002**

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ISSUE

1. Sales and Withholding Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid sales taxes.

STATEMENT OF FACTS

The taxpayer was co-owner of a business that did not remit the proper amount of sales taxes during the tax period 2002. The Indiana Department of Revenue assessed the unpaid sales taxes, interest, and penalty against the taxpayer as a responsible officer of that business. The taxpayer protested that she was no longer involved with the business after November of 2002. A hearing was held and this Letter of Findings results.

1. Sales and Withholding Tax-Responsible Officer Liability

DISCUSSION

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The taxpayer produced substantial documentation that she had no duty to collect and remit sales taxes to the state for any periods after November of 2002. Therefore, she is not personally responsible for the payment of the corporate sales taxes for any periods after November of 2002.

FINDING

The taxpayer's protest is sustained.

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